



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 29, 2023

IN THE MATTER OF:

Appeal Board No. 629150

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 18, 2023 (), the Administrative Law Judge sustained, effective October 19, 2022, the employer's objection and overruled the initial determination of eligibility.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a kindergarten and first grade guidance counselor by the employer elementary school for about six weeks. He last worked on October 4, 2022. The claimant's fiancé's father passed away on

September 29, 2022. At that time, and again on October 4, the claimant told his immediate supervisor (MO) that the funeral would be held out of the country, that he was not sure of when that would occur because arrangements needed to be made to transport the deceased to the Dominican Republic, and that he would need some time off.

The school was closed on October 5. On October 6, the claimant texted MO advising that he would not be in that day, and requesting bereavement leave. MO replied, by text, instructing the claimant to send an email to the address specified for purposes of "calling out," and directing the claimant to send an email request for bereavement leave to him and to the president of the school (EF). The claimant sent both emails as instructed, from his personal email address. The claimant sent an additional email shortly thereafter on October 6, to EF, MO, and the school's principal (AA) advising that the family was experiencing complications arranging for the funeral out of the country, and that there were delays out of their control.

On October 7, 2022, MO sent the claimant an email, at his work email address, expressing concern over the claimant's failure to advise the employer regarding whether he would be at work that day, failure to specify the number of days he would need away from his job, and directing the claimant to contact him no later than 8:00 A.M. on October 12, with the number of days off needed, so the information could be passed along to the president and a decision could be made regarding the claimant's request for leave.

On October 12 at 12:51 P.M., the claimant emailed EF, MO, and AA, stating that he had not received an answer regarding his request for bereavement leave, that he had informed MO the day before that the funeral would be "this Thursday" (October 13) and that "the earliest" he could be back to work was the following Monday (October 17, 2022). This would be the last communication with the employer initiated by the claimant until October 19. The claimant flew to the Dominican Republic on October 13, 2022.

On October 15, 2022, EF emailed the claimant, at his school email address, advising of the school's concern over the claimant's failure to provide the employer with a certain day of his return to work. This email also referenced the employer's concern over the number of days the claimant had been absent, his failure to follow protocol regarding calling in his absences, and directed the claimant to review the employee handbook regarding bereavement leave. EF asked the claimant to clarify whether he intended to return to work, and if so on what day. The email ended by advising the claimant that EF and AA would be meeting on October 17 to determine the next step to take regarding the claimant's status.

By letter dated October 18, 2022, the employer advised the claimant that his employment had been terminated effective that day, as a result the claimant's

abandonment of his position. This communication was also emailed to the claimant on October 19. That same day, the claimant responded to this email and the separation letter. The claimant flew back to the United States on October 20, 2022.

OPINION: The evidence establishes that the claimant did not return to work after a nearly two-week absence, did not provide the employer with a definite return to work date, and did not contact the employer to advise that he would not be returning on October 17, the date the claimant had indicated was the earliest he would be returning.

We find it significant, and dispositive, that the claimant made no attempt at all to contact the employer after his October 12, 2022 email. We note that this fact is not disputed by the claimant. Even crediting the claimant's unsupported testimony that he had not received any of the employer's email communications because he was unable to access his work emails from his phone, it was the claimant's responsibility, if he wanted to remain employed, to continue to contact the employer and to keep his employer apprised of his return to work date. Moreover, if the claimant knew that he could not access his work email on his cell phone, it was his responsibility to advise the employer of that fact, and request that all communications be sent to his personal email address for the period when he was not at work. There is no evidence that the claimant made such a request.

Further, even if we were to credit the claimant's testimony that his cell phone was not dependable as a means to communicate while he was in the Dominican Republic, we find it was incumbent upon the claimant to maintain contact and communication with his employer about his plans, by whatever means necessary. We note that the claimant testified that when in the Dominican Republic he was "barely able to use" his phone, and that "a lot of the times our phones were off because we didn't have electricity." Both of these statements

suggest that there were times the claimant was able to use his phone, and that there were times the phones were on, yet the claimant failed to even attempt to communicate with the employer after October 12, 2022. We find it significant that the claimant was able to respond to the employer's October 19 email regarding his separation from employment that same day, and while he was still in the Dominican Republic. This fact weakens the credibility of the claimant's explanation for his failure to communicate with the employer after

October 12, and we are not convinced that the claimant had no ability to communicate with or contact his employer after his October 12, 2022 email.

We find that the claimant failed to return to work after a period of absence, and failed to maintain contact with the employer to keep the school apprised of his plans and return to work date. These failures, and the absence of even an attempt to contact the employer after October 12, 2022, amount to the claimant's abandonment of his job. In addition, the claimant has not established a credible, compelling reason for his complete lack of communication after October 12. Therefore, we find that the claimant's separation from employment was voluntary and was without good cause for unemployment insurance purposes. Accordingly, we conclude that the claimant was separated from employment under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is affirmed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause, is sustained, effective October 19, 2022.

The initial determination, holding the claimant eligible to receive benefits, is overruled.

The claimant is disqualified from receiving benefits, effective October 19, 2022, until the claimant has subsequently worked in employment and earned remuneration at least equal to 10 times the claimant's weekly benefit rate. Employment and earnings from non-covered, excluded or self-employment will not count.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER